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taining discipline, and to put forth his best efforts for the advancement of the music department, thus imposing on him the duty to exercise a higher degree of skill and diligence than is ordinarily implied by law in a contract between master and servant. Defendant was discharged by plaintiff, and in an action for the discharge there was evidence that defendant was inattentive to his duties, rude to pupils and other teachers, and had, in short, about destroyed the music department. The court attempted to cover the whole case by a charge to find for defendant if plaintiff by his negligence and discourtesy so conducted himself as to injure plaintiff's business by causing pupils to leave the school or to refuse to take music. Held, that the charge was erroneous in failing to bring to the jury's attention the point that plaintiff had contracted for a higher degree of skill and diligence than is ordinarily implied by law in the relationship of master and servant.

**4. Trial—Instructions—Sufficiency—Presentation of Whole Case.—**

An instruction given as covering the entire case should embrace material points in the case, although requested instructions presenting the individual points of the case are in themselves objectionable.

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**NORFOLK & W. RY. CO. v. TIDEWATER RY. CO.**

March 1, 1906.

[52 S. E. 852.]

**1. Railroads—Construction—Crossing Other Railroads—Proceedings before Commissions.—**The State Corporation Commission, in inquiring into the necessity of the propriety of the location of a crossing by one railroad over the tracks of another, under Code 1904, § 1294b, cl. 3, acts in its capacity as a court of record, and, under section 1313a, cl. 23, of the Code, providing that the commission when so acting shall observe and administer the common-law and statutory rules of evidence, should not, except in rare cases, call witnesses not introduced by either party, and, if it does call such witnesses, should swear them as witnesses called by the parties are sworn.

**2. Same—Appeal—Harmless Error—Admission of Evidence.—**Error of the State Corporation Commission in admitting evidence is not ground for reversing their order in reference to the location of a railroad crossing, unless the other evidence in the case is not sufficient to support its finding.

**3. Same—Notice of Proposed Crossing.—**Under Code 1904, § 1294b, cl. 3, providing that, before a railroad which crosses another road commences to work upon such crossing, the general managing officer of the former road shall submit plans and specifications to the general officer of the latter, and the general officer of the latter may apply to the State Corporation Commission to inquire into the necessity of the crossing within 15 days after the service of notice of such plans,

a railroad which had failed to come to any agreement with another railroad which sought to cross its tracks and which was served by the latter road with a notice, in substantial compliance with the statute, of the proposed crossing, and which, within 15 days after receiving such notice, commenced proceedings before the corporation commission to have the propriety of the crossing determined, could not contend before the commission that the notice was not a sufficient compliance with the statute.

**4. Same—Question Involved.**—Under Code 1904, c. 1294b, cl. 3, providing for proceedings before the State Corporation Commission for the determination of the necessity for a proposed railroad crossing and the place where and manner in which such crossing should be made, and further providing that, in case the method of crossing is determined upon, the compensation to be paid by the party desiring to make the crossing shall be ascertained according to the laws regulating the exercise of the right of eminent domain, the question of whether the crossing of the tracks of one railroad by another is a taking of property within the constitutional prohibitions against taking property without compensation and without due process of law is not involved in the proceedings before the commission.

**5. Same—Propriety of Crossing—Determination.**—Const. § 166 [Code 1904, p. cclxi], provides that railroads shall have the right to parallel, intersect, connect with, or cross any other railroad. Code 1904, § 1294b, cl. 62, authorizes railroads to cross other railroads in the manner prescribed by section 1294b. The latter section requires crossings to be so constructed as not to impair or obstruct the works and operations of the railroad sought to be crossed, and requires them to be supported by proper structures, etc. Held that, while a railroad ordinarily ought not to be permitted to cross the throat of the yards of another railroad at grade, there may be exceptional conditions which will render such a crossing proper, and the question whether the locality of a proposed crossing is such that the crossing should not be permitted is to be determined by the facts and circumstances of the particular case.

**6. Same.**—Code 1904, § 1294d, cl. 38, declaring it to be the policy of the state that the crossings of one railroad by another shall, wherever reasonably practicable, pass above or below the existing structure, does not prohibit crossings at grade, where the establishment of an overhead or underground crossing is not reasonably practicable and would involve an unreasonable expense.

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STOKES' ADM'X *v.* SOUTHERN RY. CO.

Jan. 18, 1906.

[52 S. E. 855.]

**1. Railroads—Accidents at Crossings—Evidence—Admissibility.**—  
In an action against a railway company for the death of a traveler